



PARLIAMENT OF UGANDA

**REPORT OF THE SECTORAL COMMITTEE ON LEGAL AND PARLIAMENTARY
AFFAIRS ON THE SEXUAL OFFENCES BILL, 2019**

**Office of the Clerk to Parliament
Parliament Buildings, Kampala**

February, 2021

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1.0. INTRODUCTION

The Sexual Offences Bill, 2019 was read for the first time on the 24th of November 2019 and referred to the Committee of Legal and Parliamentary affairs for scrutiny as required in Rule 128 of the Rules of Procedure of Parliament. It is a private member's Bill sponsored by Uganda Women Parliamentary Association (UWOPA) and introduced by its Chairperson, Hon. Monica Amoding.

The Sexual Offences Bill, 2019 is a resubmission of a Bill that was first introduced on the 14th of April 2016 and referred to the Committee of Legal and Parliamentary affairs for scrutiny. The Sexual Offences Bill, 2015 was withdrawn from the House on the 24th February, 2019 in order to incorporate the amendments that were proposed by the mover during the House's consideration of the Bill.

2.0. METHODOLOGY

The Committee was guided by the provisions of Rule 128 of the Rules of Procedure to examine the Bill in detail, made inquiries in relation to it and received views and memoranda from the following stakeholders;-

- (a) Mover of the Bill and members of UWOPA
- (b) The Minister of Justice and Constitutional Affairs
- (c) Uganda Law Reform Commission
- (d) Uganda Law Society
- (e) Equal Opportunity Commission
- (f) Chapter Four
- (g) Human Rights Awareness and Promotion Forum
- (h) Justice Centre Uganda
- (i) Jenga Afrika
- (j) Centre for Health, Human Rights and Development

3.0. OBJECTIVES OF THE BILL

The object of the Bill is to enact a specific law on sexual offences for the effectual prevention of sexual violence; to enhance punishment of sexual offenders; to provide for

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the protection of victims during sexual offences trials; to provide for extra territorial application of the law; to repeal some provisions of the Penal Code Act, Cap. 120 and for other related matters.

The Bill is prompted by the need to cure the defects in the existing legislation, especially the Penal Code Act, Cap. 120 which, while it makes provision for a number of sexual offences, the provisions are outdated and the ingredients constituting the offences are narrow given the fact that they do not reflect the evolving trends in social attitudes, values and sexual practices.

The mover of the Bill also argues that there is also need to outlaw new forms of sexual violence and exploitation that have emerged such as sex tourism, indecent communication and child marriages among others which are currently not effectively dealt with under the current laws thereby posing a challenge while dealing with them.

It is therefore necessary that a specific law on sexual offences be enacted to provide for the effectual prevention of sexual violence and to consolidate all sexual offences into a single legislation.

4.0. CONSOLIDATION OF SEXUAL OFFENCES IN UGANDA

In Uganda, sexual offences are prescribed in a number of legislations including the Penal Code Act, Cap 120, the Prevention of Trafficking in Persons Act, 2009, the Domestic Violence Act, 2010, and the Children Act Cap 59. In order to enhance the effectiveness of these laws, efforts have been made by Government in the past to have a single legislation on sexual offences.

For instance, in 2000, Government introduced the Sexual Offences (Miscellaneous Amendment) Bill, with the intention of amending various legislations on sexual offences.

This was followed by the Sexual Offences Bill, 2012 spear headed by UWOPA which was

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put on hold to enable consultation between UWOPA and government, specifically, the Ministry of Justice. All the above measures have not been successful for various reasons.

Whereas various commonwealth countries such as India, United Kingdom and Kenya have all consolidated sexual offences in one law, Uganda still has sexual offences scared in various pieces of legislation.

The consolidation of sexual offences into a single piece of legislation will provide the public with a single piece of legislation on the subject matter, ensuring clarity and easy access to the public. Furthermore, it will help the legislation respond to the evolving and current trends in sexual offences, curb sexual violence and adopt international best practices in the prevention of sexual violence.

5.0. GENERAL ANALYSIS, OBSERVATION, FINDINGS AND RECOMMENDATIONS

This part of the report will examine the amendment proposed, its legality, effect and effectiveness in light of the Constitution, existing public policy, court decisions, other laws and the mischief it intends to cure. The analysis will be in thematic areas the bill touch on as well as the new proposals made by the Bill.

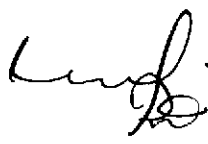
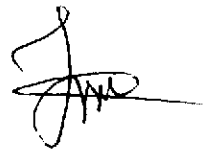
5.1. SEXUAL ACT

The Bill proposes to change and standardize the nomenclature used in sexual offences from carnal knowledge to sexual offences. The Bill adopts the word sexual act in all offences under the Bill which is defined as follows-

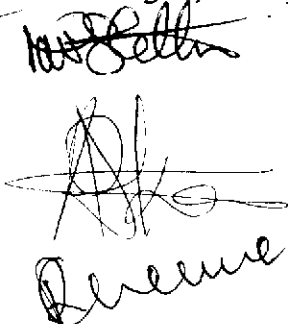
"sexual act" means the-

(a) penetration of a person's sexual organ and mouth or anus by a person's or an animal's sexual organ or object;

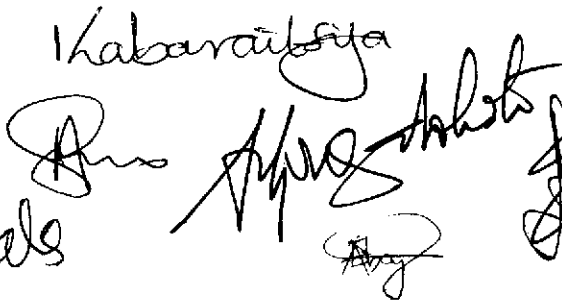
(b) contact or stimulation of a person's sexual organ with another person's or animal's sexual organ, or object; or



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*(c) insertion of a person's or animal's body part or any object into the sexual organ, anus or mouth of another person;
but does not include the penetration of person's sexual organ, mouth or anus, contact, or stimulation of person's sexual organ, or insertion of any object into the sexual organ, anus or mouth of another person done for sound health practices or proper medical procedure;"*

The penal code has been using the words "carnal knowledge" or sexual act interchangeably. For instances, the word carnal knowledge has been used in the penal code in the offence of rape in section 123, defilement of idiot or imbeciles in section 130, procurement in section 131, Procuring defilement of women by threats, in section 132, Householder, etc. permitting defilement of girl under the age of eighteen in section 133, Conspiracy to defile in section 140 and in the offence of unnatural offences in section 145. On the other hand, the word sexual act is used in the offence of Defilement of persons under eighteen years of age in section 129 of the penal code Act.

Whereas these words are used interchangeably, they are defined differently. For instance, the word sexual act is defined in section 129 (7) as follows-

"sexual act" means— (a) penetration of the vagina, mouth or anus, however slight, of any person by a sexual organ; (b) the unlawful use of any object or organ by a person on another person's sexual organ;

On the other hand, whereas the word carnal knowledge is not defined in the Penal Code Act, it has been defined by court to mean the penetration of the vagina, however slight, of the victim of by a sexual organ, where the sexual organ is the penis.

The committee has reviewed the proposal to standardize the use of the word sexual act in all sexual offences and it supports it. The Committee notes that the word sexual act is gender neutral, meaning the acts constituting the offence can be committed by both sexes rather than the current situation where certain offences, which can be committed

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by both sexes can only be committed by persons of the male gender exclusively because of the use of the word carnal knowledge.

The Committee also notes that sexual act is broader than carnal knowledge since carnal knowledge is exclusively about penetration of the vagina by the penis yet sexual acts include penetration of other body parts with or without the sexual organ.

The Committee notes that the standardization of the nomenclature used in sexual offences from carnal knowledge to sexual act is an international best practice as exemplified in countries like Kenya, United Kingdom and many other commonwealth countries.

Recommendation

In light of the above, the committee recommends that;

- 1. the word sexual act be used instead of carnal knowledge.*
- 2. the definition of sexual act should only be limited to sexual organs since the rest of the provisions deals with acts that would constitute unnatural offences.*

5.2. RAPE AND AGGRAVATED RAPE

Clauses 2 and 3 of the Bill deal with the offences of rape and aggravated rape. The Bill in clause 2 creates the offence of rape and requires the offence is committed when a person performs a sexual act with another person-

- (a) without that other person's consent; or
- (b) incapable of consenting to the sexual act.

The Bill further proposes that when a person obtains consent for a sexual act by means of threats, duress, undue influence, misrepresentation or intimidation of any kind, the consent is negated.

The Bill also proposes that a person who is asleep, unconscious, in an altered state of mind due to influence of medicine, drugs, alcohol or any substance that adversely affects his or her judgment or is mentally impaired is incapable of consenting to a sexual act.

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The Bill further proposes to prescribe a penalty of life imprisonment if a person commits the offence of rape and eight years if he or she attempts to commit the offence of rape.

The Bill further proposes to create an offence of aggravated rape, where the rape is committed in the following circumstances-

- (a) the sexual offender is infected with HIV or suffering from AIDS;
- (b) the offender is a serial offender;
- (c) the victim suffers disability;
- (d) the act was committed by two or more persons;
- (e) the act was committed in the presence of another person;
- (f) the offender is a person in authority or a person in trust; or
- (g) the victim is of advanced age.

The Bill proposes the death penalty as a sentence for a person who commits the offence of aggravated rape or imprisonment for 8 years for a person to attempt the offence of aggravated rape.

The Committee notes that the provision in clause 2 seeks to replace section 123 and 124 of the Penal Code Act. These sections relate to rape and the punishment for rape and provide as follows-

123. Definition of rape.

Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind or by fear of bodily harm, or by means of false representations as to the nature of the act, or in the case of a married woman, by personating her husband, commits the felony termed rape.

124. Punishment for rape.

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A person convicted of rape is liable to suffer death.

The Committee notes that for the offence of rape, as defined in section 123, the offence could only be committed by a person of the male gender and not any other person of any gender. The prosecution had to prove that there was unlawful sexual intercourse between the man and the victim of the offence, there was no consent or if there was consent, the consent was obtained by force or by means of threats or intimidation of any kind or by fear of bodily harm, or by means of false representations as to the nature of the act, or in the case of a married woman, by personating her husband. The punishment for rape was death.

The Committee further notes that clause 2 of the Bill seeks to change all that by prescribing that-

- (a) Carnal knowledge is no longer a requirement in proving the offence of rape;
- (b) Rape is now gender neutral, meaning that unlike section 123 of the penal code which required that the offence of rape could only be committed by a male person, clause 2 of the bill requires that any person, irrespective of gender can commit the offence of rape;
- (c) Reduces the penalty upon conviction from death to life imprisonment;

The Committee has examined the proposals and is agreeable to the amendment since it recognizes that not every rape is the same since there may be aggravating circumstances that aggravate the rape.

The Committee also notes that the amendment removes an ambiguity in the law which assumed that rape could be committed against a person below the age of 18 years yet this is legally not possible. The Committee notes section 123 currently allows a person who has sexual intercourse with a person below the age of 18 years to be charged with the offence of rape. The Committee notes that persons below the age of 18 years cannot legally consent to a sexual act or carnal knowledge and since consent is a total defense

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to a charge of rape, persons who cannot give consent cannot then be assumed to have consented to the carnal knowledge.

The ambiguity of the section 123 was discussed in the case of ***Uganda Vs Kusemererwa Julius HCCA No. 15 of 2004***, where court held that the offence of rape cannot be committed against persons below 18 years of age. Court reasoned that-

"I would understand a woman to be an adult above eighteen years of age going by Article 31 of the Constitution of the Republic of Uganda, 1995 (as amended). Any female below the age of majority (eighteen years) would be described as a girl. A child below eighteen years is incapable of giving consent to sex. In rape LACK OF CONSENT to the sexual act is what makes it an offence. Consent is a complete defence to Rape. But in defilement under S.129 consent is not a defence. It is irrelevant as long as the victim is below the age of eighteen years. That means that Age is a central factor in the construction of defilement as a crime differentiating it from rape"

Court further held that-

"Having legislated and amended the Penal Code to create the new offence of Simple defilement, Parliament cannot be said to have intended to retain any age of girls as victims of rape under S.123 of the PCA. It is a question of an omission or poor legislative draftsmanship or poor cross-referencing not to delete the words "or girl" from the definition of Rape. The word 'girl' in that section is redundant and meaningless. We cannot say that we are

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correctly interpreting the law of defilement or rape if we go by the mere wording "woman or girl" in Section 123 PCA. Law is not mere words. Therefore, the provision should be redrafted to specifically provide circumstances aggravating a rape."

Court concluded that-

"Technically speaking, Rape ceased to apply to girls in 1990 and was replaced with provisions of defilement. Going by the 2007 amendments to the PCA, the two offences are distinct, distinguishable by the age element, criminal jurisdiction and the difference in the prescribed punishments."

The Committee therefore supports the amendment to restrict rape to persons above the age of 18 years since it is clear that rape cannot be committed on persons below the age of 18years.

The Committee also supports the proposal to make the offence of rape gender neutral since it will harmonise it with the offence of defilement which is gender neutral and also, it will close a lacuna in law as to whether a person of the male gender can be raped. The Committee notes that currently, the offence of rape is not gender neutral, meaning that it can be committed by a person of the male gender only and against a person of the female gender.

In such a situation, the law did not cater for the rape of persons of the male gender yet incidents of such rape are continually being reported in media. This unjustified distinction in the application of the law between the different genders contravenes article 21 (1) of the Constitution which relates to equal protection before the law.

The Committee has examined the proposals in clauses 2 and 3 on the penalty for attempts and has finds the amendment to be unjustified. The committee is aware that the Bill

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proposes that a person who attempts to commit the offence of rape is liable to imprisonment for a period not exceeding 8 years while a person who attempts commit the offence of aggravated rape is liable to imprisonment not exceeding 10 years.

The Committee notes that currently, section 125 prescribes a penalty of life imprisonment for a person who attempts to commit the offence of rape. The Committee is of the considered opinion that the proposal to reduce the penalty prescribed from life imprisonment to 8 years is unreasonable since the punishment is not commensurate with the offence. The Committee notes that a person convicted of the offence of attempted rape fulfils all the ingredients of rape save for carrying out the actual rape.

In this, the Committee is fortified by section 386 of the penal code Act which defines an attempt in the following words-

"When a person, intending to commit an offence, begins to put his or her intention into execution by means adapted to its fulfilment, and manifests his or her intention by some overt act, but does not fulfil his or her intention to such an extent as to commit the offence, he or she is deemed to attempt to commit the offence"

For rape, such a person may have used force in attempting the rape but doesn't actually carry out the actual rape because of some intervening factors. For all intents and purposes, such a person has formed the necessary *mens rea* and it is only the act that remains.

In such an event, such a person should ordinarily serve a punishment that is commensurate with the crime, being slightly less than the one prescribed for persons who have committed such offence. Section 388 of the Penal code Act is directive on this matter and it provides guidance as follows-

"Any person who attempts to commit a felony of such a kind that a person convicted of it is liable to the

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punishment of death or imprisonment for a period of fourteen years or upwards, with or without other punishment, commits a felony and is liable, if no other punishment is provided, to imprisonment for seven years."

In this regard, since section 125 of the penal code act had prescribed a penalty of imprisonment for life and the punishment for rape is proposed to be reduced from death to life imprisonment, attempted rape should carry at least ten years imprisonment and for the aggravated attempt to carry a sentence of life imprisonment.

The reasoning behind this is that rape is a grave offence, the punishment for attempted rape should be lower than the punishments prescribed for rape or aggravated rape but should be stringent enough to deter such vice.

Recommendation

In light of the above, the Committee recommends that clauses 2 and 3 be adopted albeit with the amendments to-

- (a) provide, as one of aggravating circumstances, the rape of a person with mental illness"*
- (b) provide as one of circumstances that may negate consent where the consent is obtained by force or by fear of bodily harm, or by means of false representations as to the nature of the act,*
- (c) Define advanced age.*
- (d) to require a medical test to be carried out against a person who is charged with an offence to determine his or her health status, including a test for his or her Human Immunodeficiency Virus (HIV) status.*

5.3. SEXUAL ASSAULT

The Bill proposes in clause 5 to provide for the offence of sexual assault in the following terms-

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Sexual assault.

(1) A person who unlawfully-

(a) touches the anus, breasts, penis, buttocks, thighs or vagina of another person;

(b) exposes or displays his or her sexual organ to another person;

(c) exposes or displays the sexual organ of another person.

(d) utters any word, makes any sound or gesture or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen another person;
or

(e) intrudes upon the privacy of a person,

with intent to insult the modesty of that other person, commits an offence and is liable on conviction, to imprisonment for a term of one year or a fine of twenty four currency points or both.

The amendment proposes to replace section 128 of the Penal Code Act which deals with indecent assaults. Section 128 of the penal code act is reproduced below-

128. Indecent assaults, etc.

(1) Any person who unlawfully and indecently assaults any woman or girl commits a felony and is liable to imprisonment for fourteen years, with or without corporal punishment.

(2) It shall be no defence to a charge for an indecent assault on a girl under the age of eighteen years to prove that she consented to the act of indecency.

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(3) Any person who, intending to insult the modesty of any woman or girl, utters any word, makes any sound or gesture or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen by such woman or girl, or intrudes upon the privacy of such woman or girl, commits a misdemeanour and is liable to imprisonment for one year.

The Committee has examined the proposal and is of the considered opinion that the provision appears to merge two distinct offences of sexual assault and indecent assault into one offence.

The Committee notes that there is a difference between a sexual assault and an indecent assault.

The Committee observes that whereas the penal code Act doesn't define what amounts to indecent assault, the Osborn's concise law dictionary, 8th Edition defines indecency as an act which is "offensive to public morality" and indecent assault to mean an assault or battery accompanied by circumstances of indecency.

Indeed in the case of ***DPP Vs Rogers [1943]2 ALL ER 834*** Lord Goddard had this say about indecent assault

"before you can find a man guilty of an indecent assault, you have to find that he was guilty of an assault, for an indecent assault is an assault that is accompanied by indecency."

In another case of ***R Vs Court [1987]1 ALL ER 120*** court held that the essential element of an indecent assault was that the accused knew or was reckless about the existence of circumstances which where indecent, in the sense of contravening standards of decent behaviour in relation to sexual modesty or privacy.

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The above cases illustrate that in order for an accused person to be convicted of indecent assault, the prosecution must prove an act (assault) which is accompanied by utterances suggestive of sexual intercourse. This was followed in the case of ***Ssenyondo Wilson Vs Ug Criminal Appeal No. 53 of 2009.***

In the instance case, the first part of the provision has nothing to do with indecent assault unless the direct and indirect contact with the anus, breasts, penis, buttocks, thighs or vagina of a person as well as the display of sexual organs to another person is accompanied by utterances of indecency.

The Committee therefore notes that whereas an indecent assault deals with the spoken words, a sexual assault is an assault accompanied by a sexual act.

In the proposal in the Bill, it is evident that the Bill merges indecent assaults and sexual assaults into one provision. For instance, whereas paragraphs (a), (b) and (c) are sexual assaults, paragraphs (c) and (d) are indecent assaults and should ordinarily be placed in different offences.

Recommendations

In light of the above, the Committee recommends that clause 5 stands part of the Bill albeit with the amendment that the provision should be separated into three distinct offences, namely the offence of indecent assault, sexual assault and indecent exposure.

5.4. INDECENT COMMUNICATION

The Bill in clause 6 proposes to create the offence of indecent communication and proposes that it is committed when a person who by whatever means transmits, transfers, sends, forwards, directs material of a sexual nature to another person without the consent of that other person. The proposed offence imposes a penalty of a fine not exceeding three hundred currency points or to imprisonment for seven years or both.

The Committee has reviewed the offence of proposed to be created in clause 6 and whereas it is agreeable to the creation of the offence of offensive communication, it may

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be viewed as watering down the provisions of the anti-pornographic Act, especially, section 13 of that Act.

The Committee notes that section 13 of the Anti-pornographic Act creates an offence of pornography, which is committed by a person who produces, traffics, publishes, broadcasts, procures, imports, exports, sells or abets any pornography. The Committee observes that section 13 of the Anti-pornography Act prescribes a penalty of ten years and a fine of five hundred currency points.

The Committee observes that the proposal in clause 6 is likely to water down the provisions of the Anti-Pornography Act in so far as prescribing a lower penalty for the offence and also requiring the consent of a person who receives the offensive communication, yet the same conduct is expressly prohibited under the anti-pornography Act. Indeed, the Committee is aware that clause 6 proposes to define material of a sexual nature to include sexually suggestive conversations, texts, pictures, videos, objects or written materials, which would all fall within the definition of pornography as defined in the Anti-pornography Act.

The Committee also notes that whereas consent is requirement under the proposed clause 6, it is not clear in the provision at what time this consent is required or the form it will take and whether it is express or constructive.

Recommendation

In light of the above, the Committee recommends that clause 6 is harmonized with the provisions of section 13 of the Anti-pornography Act and that consent is removed from the provision.

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5.5. SEXUAL HARASSMENT

Clause 7 of the Bill proposes to introduce into Uganda's legal regime the offence of sexual harassment. Clause 7 proposes that a person commits the offence of sexual harassment where he or she-

(a) makes direct or indirect sexual advances or requests whether verbal or written to;

(b) displays sexually suggestive pictures, objects, written materials or sexually suggestive gestures to ;

(c) engages in unwelcome touching, patting, pinching or any other unsolicited physical contact with; or

(d) makes sexually oriented comments, jokes, obscene expressions or offensive flirtations with ;

an employee, student, patient or other person under his or her authority knowing or having reason to believe that such conduct is not welcome or offensive, as a pre-condition for preferential treatment in employment, promotion, recommendation, academic progress, healing or other favor and that by its nature has a detrimental effect on that other person commits an offence and is liable on conviction, to a fine not exceeding two thousand currency points or to imprisonment not exceeding ten years or both."

The Committee has examined the Bill and supports the proposed criminalisation of incidents of sexual harassment in Uganda. The Committee notes that currently in Uganda,

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incidents of sexual harassment have been on the increase yet the law does not sufficiently deal with the matter.

It is important to note that currently, sexual harassment is not a criminal offence under the laws of Uganda. The only law that deals with sexual harassment is section 7 of the employment Act, 2006 as well as the Employment (sexual harassment) regulations of 2012.

The committee notes that one of challenges of the current provisions on sexual harassment under the Employment Act is that sexual harassment is considered a civil matter which is handled by the labour officer rather than a criminal offence carrying criminal sanctions. Secondly, it is evident that the provision doesn't prescribe any sanctions for breach, thereby making it non deterrent.

The Committee further notes that the only criminal sanctions attaching against a person accused of sexual harassment are found in Regulation 19 of the employment (sexual harassment) regulations but these are not deterrent enough considering that it prescribes a fine not exceeding six currency points or imprisonment not exceeding three months or both. Therefore, the proposal to criminalize sexual harassment is welcome and should be supported.

Recommendation

In light of the above, the Committee recommends that clause 7 stand part of the Bill albeit with amendments to;

- *Make it immaterial that the person consented to the sexual harassment or that the sexual harassment was welcome or did not have a detrimental effect;*
- *require persons who commit the offence of sexual harassment while public officers to vacate their offices in addition to the penalty prescribed in the section.*

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5.6. PROTECTION OF DETAINEES FROM SEXUAL EXPLOITATION

Clauses 8 and 9 of the Bill propose to create two offences, namely, the offence of detention with sexual intent and sexual act with persons in custody.

In clause 8, the Bill proposes to create an offence against a person who unlawfully detains another person with the intention of performing a sexual act with that other person. On the other hand, clause 9 proposes to create an offence against a person who being an officer or an employee of a detention facility performs a sexual act, with a person in custody of the detention facility or procures, authorizes, facilitates, compels or induces another person to perform a sexual act, with a person in custody of a detention facility.

The Committee is in support of these proposals since they will protect persons in detention from being sexually exploited while in detention or subjecting them to inhuman degrading treatment while in custody.

The Committee observes that sometimes detainees are subjected to humiliating searches as officers try to use their genitals to ascertain their actual sex or gender and are subjected to tests such as the anal exams. They are also subjected to sexual harassment by their fellow suspects/prisoners, which is in most cases constructively sanctioned by the officials in charge. These searches are inhuman and degrading and are a form of torture to the person detained and are not adequately prohibited or punished under the law, making these provisions necessary.

The Committee however notes that the efficacy of these provisions may be affected by the fact that consent is a total defense to most sexual offences. This means that if a person in custody consents to the performance of a sexual act with any person, such consent shall bar the prosecution of the offenders for offences under this Act.

Therefore, considering that the consent of a person in such circumstances might not be voluntary, independent or informed due to the fact that such a person is held in custody, the consent of a person to the sexual act may be abused.

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The Committee also notes that the clause 8 does not define what amounts to detention which may create confusion between clauses 8 and 9.

For instance, the offence prescribed in clause 8 is one that can be committed by any person who prevents a person to leave any place he or she is at while the offence in clause 9 is one which can be committed by a person in charge of a gazetted place of detention, say like prison, police station or any other lawful place of detention.

The word detention, if not defined may be confusing to the user of the law book, resulting in ambiguity. For instance, a person may confuse the word detention, which ordinarily means the keeping or confining of a person in custody without any lawful reason, with the words unlawful imprisonment which occurs when a person is restricted in their personal movement within any area without justification or consent.

The words described above are so similar and interchangeably used that the definition of the word "detention" should be able to cater for both detention and unlawful imprisonment. For instance, in the case of **Chopra v. T. Eaton Company, 1999 A.J. 277 and 240 A.R. 201** false imprisonment was defined to mean-

"The detention of a person contrary to his/her will, the restraint of a person's personal liberty, coercion exercised upon a person to prevent the free exercise of his powers of locomotion. It may take place without the actual application of any physical agencies of restraint, such as locks or bars, as by verbal compulsion and the display of available force. Every confinement of the person is an imprisonment, whether it be in a prison, in a private home, or even by forcibly detaining one in the public streets, any unlawful exercise or show of force by which a person is compelled to remain where he does not wish to be."

RECOMMENDATION

In light of the above, the Committee recommends that clauses 8 and 9 do stand part of the Bill albeit with the following amendments-

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(a) Clause 8 and 9 should be expanded to make consent of a person to the sexual act immaterial and not a defense;

(b) In clause 8, the word detention should clearly be defined and should include, where possible, the unlawful imprisonment of a person;

5.7. SEXUAL EXPLOITATION.

The Bill in clauses 10 propose to create the offence of sexual exploitation.

The Bill proposes that a person commits the offence of sexual exploitation were that person, for gain to him or herself, causes, encourages, induces, entices, incites another person to be sexually exploited or controls any of the activities of another person to the effect that that person is sexually exploited.

The offence of sexual exploitation has always existed in the penal Code and the Prevention of Trafficking in Persons Act, 2009, except that under the Penal Code, it is taken to be an offence associated with living on the earnings of prostitution, contrary to section 136 (2) of the Penal Code Act. Section 136 (2) of the Penal Code Act is reproduced below.

"Where a person is proved to live with or to be habitually in the company of a prostitute or is proved to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that he or she is aiding, abetting or compelling his or her prostitution with any other person, or generally, that person shall, unless he or she shall satisfy the court to the contrary, be deemed to be knowingly living on the earnings of prostitution"

The Committee also notes that under Prevention of trafficking in persons Act, sexual exploitation is not a standalone offence but a example of exploitation, a matter that has

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to be proved in the offence of trafficking. This means that sexual exploitation is not a standalone offence under the Prevention of Trafficking in persons Act, meaning, it cannot be prosecuted in its own right, independent of the trafficking offence.

The Bill now proposes to create a standalone offence of sexual exploitation and defines sexual exploitation as follows-

"sexual exploitation" means the use of a person in prostitution, sex tourism, pornography, the production of pornographic materials or the use of a person for sexual conduct or other lascivious conduct"

The Committee has examined the proposal to create a standalone offence of sexual exploitation as proposed in the Bill since currently, the offence is not prosecuted in its own right save where the same is committed in the offence of trafficking in persons or as provided in section 136 (2), under the offence of living on the earnings of prostitution.

The Committee is aware that incidents of sexual exploitation are on the rise in Uganda and there is need to specifically put an end to such a vices. The Committee is aware that stories of Ugandan migrant workers in the Middle East and other parts of the diaspora are reported almost daily in Ugandan media. The majority of Ugandan migrant workers in the Middle East report being sexually exploited in form of forced sexual intercourse, forced prostitution, forced pornography production and sex slavery. The same vice has been reported amongst some sections of Ugandan society where persons are lured to urban areas with promises of employment and end up being sexually abused.

The Committee notes that the lack of a standalone provision dealing with sexual exploitation has meant that victims of such conducts cannot ably seek justice. This coupled with stigmatizing has meant that the perpetrators of these vices are not punished.

The Committee is also aware that currently, section 136 (2) is limited in scope since it only punishes persons who lives on the earnings of prostitution. This means that for that

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offence to be committed, the person on whose earnings the perpetrator is surviving on must be a prostitute. In most of the cases reported on this matter, the victims of such a vice are not prostitutes. In most cases, the victims are upright members of society who are forced to engage in sexual acts either through treats, withdrawal of travel or identification documents, while others are told they are repaying fees arising from their recruitment processes.

Recommendations

The Committee recommends that clause 10 do stand part of the Bill albeit with the following amendments-

- *align the definition of sexual exploitation with the offence as created in clause 10.*
- *Impose a higher penalty where the victim of the offence is a child*
- *Make consent to sexual exploitation immaterial to a charge under that section of the law.*

5.8. UNNATURAL OFFENCES

Clause 11 of the Bill proposes to create the offence of unnatural offences to deal with situation where a person;

- (a) performs a sexual act with another person contrary to the order of nature; or
- (b) engages in a sexual act with an animal; commits an offence and is liable on conviction, to imprisonment for ten years.

The Committee notes that this is an offence that is already prescribed under section 145 and 146 of the Penal Code Act. Whereas the committee is agreeable to the inclusion of this offence in this Bill, it is of the considered opinion that the offence would not be effective since the major ingredients of the offence are not explained. This reasoning is bone out of the realisation that the Bill does not define what amounts to having a sexual act with another person contrary to the order of nature.

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The Committee notes that Article 28 (12) directs that except for contempt of court, no person shall be convicted of a criminal offence unless the offence is defined and the penalty for it prescribed by law. The failure to define the major ingredients of this offence might result in its challenge before courts of law since the offence is not clear as to which conduct is prohibited.

Recommendation

The committee therefore recommends that for completeness, clause 11 should stand part of the Bill albeit with the amendments that the ingredients of the offence are defined to include;

- (i) The penetration of another person's anus with that other person's sexual organ or with any object;
- (ii) A ban on a sexual act between persons of the same gender.

5.9. DEFILEMENT AND AGGRAVATED DEFILEMENT

The Bill in clauses 13 and 14, create the offence of defilement and aggravated defilement.

The Bill proposes that a person commits the offence of defilement if that person performs a sexual act with a child. The Bill proposes a penalty of fifteen years for the offence of simple defilement.

The Bill also proposes to create the offence of aggravated defilement, which is committed by a person who performs a sexual act with a child and at the time of performing a sexual act, the-

- (a) child is below the age of fourteen years;
- (b) child is a person with a disability;
- (c) offender is infected with the Human Immunodeficiency Virus (HIV) or Acquired Immunodeficiency Syndrome (AIDS);
- (d) offender is a person in authority over the child;
- (e) offender is a serial offender; or

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(f) offender is a relative.

The Bill proposes a penalty of imprisonment for 18 years.

The Committee notes that section 129 and 130 of the Penal Code Cap 120 creates the offence of defilement and aggravated defilement. The Penal Code requires that a person who performs a sexual act with another person who is below the age of eighteen years, commits a felony known as defilement and is on conviction liable to life imprisonment. On the other hand, a person who performs an aggravated defilement is liable to suffer death.

The Committee is agreeable to the amendments made by the Bill, except the proposal to reduce the prescribed penalty. The Committee notes that the proposal to reduce the penalty for simple defilement from 18 years to 15 years and for aggravated defilement from death penalty to 18 years.

The Committee notes that incidents of defilement and aggravated defilement continue to be registered as reported in the 2019 Police report, where 13,682 cases of defilement were reported to Police. The Committee is of the considered opinion that since incidents of defilement are being reported, there is no reason why the penalty prescribed for those offences should be reduced as proposed by the Bill.

Recommendation

In light of the above, the Committee recommends that clause 13 and 14 of the bill should stand part of the Bill albeit with amendments to revise the penalties upwards in the case of –

(a) simple defilement to life imprisonment;

(b) aggravated defilement, to suffer death;

5.10. PAYMENT OF COMPENSATION

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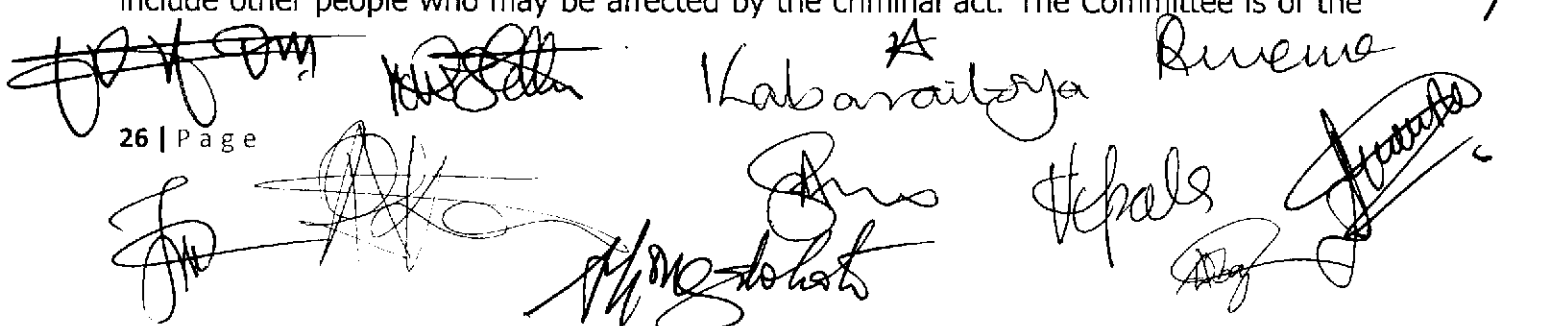
The Bill proposes to allow court to order the payment of compensation to a victim of a sexual offence.

Whereas the Committee welcomes the proposal, the committee notes that it does not go far enough in dealing with the injury caused to the victim. The Committee notes that compensation alone may not be sufficient to deal with the injury caused to the victim of the offence. For instance, apart from compensation, there are other orders such as restitution and satisfaction, which provide relief to a victim beyond what compensation can provide.

The Committee also notes that court is not guided in making the compensation order which may affect the effectiveness of the provision. For instance, the Committee notes that section 129B of the penal code Act requires the Payment of compensation to victims of defilement and goes ahead to guide court on what to consider when awarding compensation in order to ensure the award made is sufficient. That section requires that the amount of compensation shall be determined by the court and the court shall take into account the extent of harm suffered by the victim of the offence, the degree of force used by the offender and medical and other expenses incurred by the victim as a result of the offence.

The Committee also notes that whereas the award of compensation is proposed, the award of compensation is discretionary. The challenge with making the provision discretionary is that court may not grant compensation to a victim of the offence, whether the same is petitioned for or not, notwithstanding that the victim of the offence has suffered injury or not.

The Committee also notes that the provision does not define who is eligible to receive the compensation. The Committee observes that the provision uses the word "victim" without defining the word. The Committee is aware that a victim of an offence is subjective and is not limited to the person who actually suffers the criminal act but may include other people who may be affected by the criminal act. The Committee is of the

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considered opinion that the word "victim" need to be defined if the provision is going to be efficacious.

Recommendation

In light of the above, the Committee recommends that the Clause stands part of the Bill albeit with the following amendments-

- *To limit the provision to the award of damages only and not compensation since damages are only granted to atone the actual wrong suffered to the wrong suffered provide for the making of other orders, instead of providing for compensation which entitles many other matters such restitution, which may not be applicable in the circumstances of this case.*
- *To enhance the effectiveness of the provision, to require court to award damages, even when the same is not specifically requested and if it does not, to give reasons for the same*
- *to define victim referred to in the provision.*

5.11. SEX OFFENDER'S REGISTER

The Bill proposes to introduce a sex offender's register onto which the particulars of a person convicted of a sexual offence will be registered.

The Bill proposes that court shall within ten days a criminal conviction, forward particulars and a certified copy of the judgment to the Authority responsible for National Identification and Registration. The register shall be maintained by the Authority responsible for National Identification and Registration.

The Committee also notes that the registration of a person on the sex offender's register is for life without the possibility of a person ever being de-registered from the register. The Committee also notes that a person becomes eligible to be registered on the sex offender's register if he or she is commits an offence under the Act. The Committee notes

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that this will be a first in the Commonwealth since in most countries, the law only allows the registration of serious offenders only and not all sexual offences. For instance in the United Kingdom, the committee notes and some states in the United States of America, persons who commit the offence of defilement, prostitution, molestation, sexual assault, rape, incest and child abuse are the ones that get registered on the sex offenders register since in those countries, those offences are considered to be serious.

The Committee observes that a sex offender's register is one of the ways through which the public is informed of the existence of sex offenders in their neighborhoods and also serves as a reference point for prospective employers in ensuring that persons who have a history of sex offences do not get employed because of the risk they pose to the public, especially to children and other vulnerable groups.

The Committee therefore supports the establishment and creation of the sex offender's register in Uganda in the terms proposed by the Bill.

Recommendation

The Committee therefore recommends that part V stands part of the Bill since it will enhance the identification of convicted sex offenders.

5.12. Decriminalisation of prostitution

The Bill proposes in clause 45 to, among others, decriminalise prostitution by deleting sections 137, 138 and 139 of the Penal Code Act. The provisions proposed for deletion are those that prohibit the keeping of a house, room, set of rooms or place of any kind for purposes of prostitution, the provision that defines prostitution and the provision that prohibits prostitution, respectively.

Section 139 of the Penal Code Act prohibits prostitution and requires that a person who practices or engages in prostitution commits an offence and is liable to imprisonment for seven years. Section 139 defines a prostitute and prostitution to mean a person who, in

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public or elsewhere, regularly or habitually holds himself or herself out as available for sexual intercourse or other sexual gratification for monetary or other material gain, and "prostitution" shall be construed accordingly.

The Committee notes that there is a global movement towards the decriminalization of prostitution and a number of countries, such as New Zealand, parts of Australia, Germany, Netherlands, and parts of the USA have all decriminalized prostitution.

The proponents of this proposal argue that criminalizing adult, voluntary, and consensual sex, including the commercial exchange of sexual services, is incompatible with the human right to personal autonomy and privacy. They argue that government should not be telling consenting adults who they can have sexual relations with and on what terms.

They further argue that criminalization of prostitution exposes sex workers to abuse and exploitation by law enforcement officials. They contend that in criminalized environments, law enforcement agencies harass sex workers, extort bribes, and physically and verbally abuse sex workers, or even rape or coerce sex from them.

They further contend that criminalization makes sex workers more vulnerable to violence, including rape, assault, and murder, by attackers who see sex workers as easy targets because they are stigmatized and unlikely to receive help from the police. Criminalization consistently undermines sex workers' ability to seek justice for crimes against them, forcing sex workers to work in unsafe locations to avoid law enforcement agencies.

The proponents of the proposal to decriminalize prostitution propose that sex workers should be licensed to enable them work and contribute to the formal economy or at least create areas where prostitution is allowed instead of a blanket ban on prostitution.

The Committee has considered the proposal and the views from the proponents and is of the considered opinion that prostitution should not be decriminalized.

The Committee notes that Ugandan society is a religious and culturally oriented society where prostitution is a taboo. The Committee notes decriminalizing prostitution will be

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contrary to public policy and cultural norms since most cultures in Uganda frown upon sex work.

The Committee has also considered legalizing prostitution will hurt the society, the young children and the family unit. The Committee is concerned that children might be influenced to join the trade if legalized and will expose them, including women, to exploitation. The Committee was further concerned that prostitution might lead to the break down in families and the institution of marriage since a number of people might resort to prostitutes instead of sticking to their partner.

Whereas the Committee rejects the proposed decriminalization of prostitution, it finds the current provisions, specifically section 138 on the definition of prostitution to be impractical. Section 138 defines a prostitute to mean a person who, in public or elsewhere, **regularly or habitually holds himself or** herself out as available for sexual intercourse or other sexual gratification for monetary or other material gain, and "prostitution" shall be construed accordingly

The impracticality rises from the use of the words "regularly or habitually", words that connotes conduct that is done consistently like a habit. The Committee notes that it gives the prosecution an impossible task to convict a person since the prosecution has to show that the accused person has habitually and regularly been holding himself/herself out for sexual purposes. This also means that a person who commits the offence for the first time may not be convicted since she would not fulfill the conditions of regularity or habitual, matters that are central to the successful conviction of a person.

The Committee is also further concerned that currently, the offence of prostitution disproportionately targets women compared to men since majority of sex workers are women. The Committee notes that this arises from the fact that the offence is targeted at the person who offers him or herself for sex and not the buyer of such services, who are usually disproportionately men. The Committee finds the current situation of not punishing a person who pays for sex yet the person who offers sexual services is punished, to be untenable at law.

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Recommendations

- *The proposal to delete clauses 137, 138 and 139 be rejected since they are still good law.*
- *The offence of prostitution should be maintained on the law book save that it should be expanded to attach criminal liability to a person who pays for sexual services.*
- *Expand the definition of the word "prostitute" to include persons who have engaged in sexual conduct for money or other monetary gain.*

5.13. CORROBORATION OF EVIDENCE

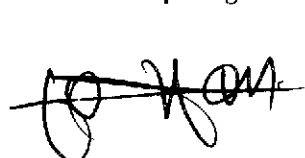
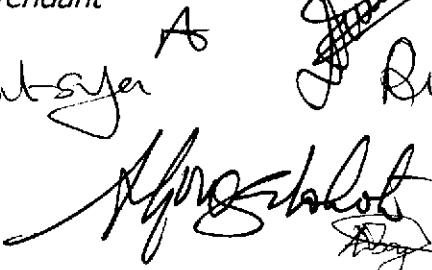


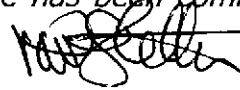
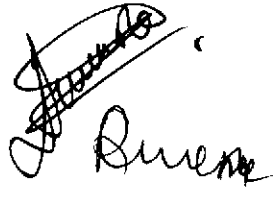

Clause 27 of the Bill makes provision for use of the uncorroborated evidence of a victim of an offence in the prosecution under this Clause.

Corroborative evidence is that evidence from another source which tends to support or confirm other evidence already given in court and it has to be from an independent source. Corroboration is used to connect or tends to connect the accused person to the commission of the crime.

The value of corroboration is rooted in the legal standard (proof beyond reasonable doubt) that must be met by the prosecution in order to secure a conviction. Consequently, the prosecution may find it necessary to adduce evidence from more than one witness in order to prove their case beyond reasonable doubt.

In Uganda vs. George Wilson Simbwa (SC) Criminal Appeal No. 37 of 1995, the role of corroboration was discussed and it was held that-

"Corroboration affects the accused by connecting or tending to connect him with the crime. In other words it must be evidence which implicates him, which confirms in some material particular not only the evidence that the crime has been committed but also that the defendant



committed it. The test applicable to determine the nature and extent of corroboration is the same whether it falls within the rule of practice at common law or within the class of offences for which corroboration is required."

As seen from the above holding, corroboration may be a statutory requirement or a rule of practice. As a statutory requirement, certain laws require the corroboration of certain pieces of evidence in order to secure a conviction. For instance, the Penal Code Act, Cap 120, in the section 43, requires that no person shall be convicted of an offence under section 40 on the uncorroborated testimony of one witness.

There are also circumstances where corroboration may be required as a rule of practice. For instance, there is a requirement for corroboration in sexual offences such as rape and defilement. This means that there is a need for independent evidence supporting the victim's allegations. This may be in form of another witness or scientific evidence.

The difference between statutory corroboration and corroboration as a rule of practice is that for statutory corroboration, any conviction of a person without corroboration of the evidence adduced makes the trial a nullity and the conviction is set aside while for corroboration as a matter of practice, discretion is given to the presiding officer to decide if the evidence is reliable and truthful before disregarding the need for corroboration.

As a general Rule, section 133 of the Evidence Act Cap 6 requires that no particular number of witnesses shall in any case be required for the proof of any fact. This means that a fact in a criminal matter can be proved by the testimony of a single witness.

As far as sexual offences are concerned, corroboration is a mere practice, save, that the presiding officer must warn assessors and himself of the danger of acting upon the uncorroborated evidence of the complainant. Having done so, the person presiding over may convict in the absence of corroboration if he is satisfied that the evidence is reliable and truthful.

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The rationale for requiring corroboration was expounded in the case of *Glanville Williams* (1962) CLR 662, where it was held that "there is a sound reason for this requirement because sexual cases are particularly subject to the danger of deliberately false charges resulting from sexual neurosis, fantasy, jealousy, spite or simply a girl's refusal to admit that she consented to an act of which she is now ashamed of.

In sexual offences, corroboration normally takes the form of medical reports or any other evidence, including the distressed condition of the victim, the victim's torn clothes, body injuries, etc. Other evidence include evidence of the conduct of the victim, including whether the complainant immediately reported the assault.

As far as the Bill is concerned, the Bill now proposes that in sexual offences, there will be no need to corroborate the evidence of a victim of an offence. The Committee is concerned that this proposal will have the effect of dispensing with the requirement for corroboration and may allow the conviction of a person based on the uncorroborated evidence of the victim of an offence.

The Committee observes that corroboration still serves a purpose and should not be dispensed with. The Committee notes that by their nature, sexual offences are usually committed in seclusion with little or no independent witnesses to support the assertion of the victim. Corroboration, in the form of medical evidence or other evidence therefore plays a role in enabling court in reaching the threshold necessary to convict a person of a sexual offence.

The Committee is of the concerned opinion that whereas there is need to give legal force to the legal practice of corroboration in sexual offences, the proposal in the Bill is untenable at law.

Recommendations

- *Clause 27 stands part of the Bill albeit with the amendment to grant court the discretion to require the corroboration of the evidence of a victim of a sexual offence.*

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5.14. FALSE ALLEGATION

Clause 34 of the Bill proposes to criminalise the making of false allegations against a person and proposes that a person who makes false or misleading allegations against another person to the effect that the person has committed an offence commits a sexual offence and is liable on conviction, to imprisonment for three years. The Bill proposes that an allegation is false or misleading if at any stage of investigations or prosecution, it is proved that the alleged act did not take place. The Bill further proposes that an acquittal for an offence under the Act does not amount to a false allegation.

The Committee notes that false allegations/ accusation is one of the challenges faced with reporting of sexual offences. On one hand, due to the serious nature of sexual offences, sexual offences have potential to be used as a tool for coercion, intimidation and can be a source of defamation and character assassination. On the other hand, when victims of an offence make a report of the commission of a sexual offence, there is a likelihood of the allegations to be taken as false. Usually attempts are made to silence the person making the report by labeling the allegations to be false.

The Committee observes that there is need to safe guard the right of a victim to report a sexual offence while at the same time protecting the false reporting of sexual offences as a means of using the sexual offence as a tool for coercion, intimidation, defamation and character assassination.

The Committee is aware that a person who makes false allegations against a person is taken to have defamed that person by harming that person's reputation. The harm that arises from making false allegations, especially of sexual offences, is immense and can lead to loss of liberty, association, welfare and may result in the hatred, contempt or ridicule of the person against whom it is made.

The Committee has considered the proposals made by the Bill and is agreement save for the proposal in sub clause (3). Under sub clause (3), the Bill proposes that an acquittal

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for an offence does not amount to a false allegation. The Committee is however of the considered opinion that sub clause (3) should be deleted since it contradicts with sub clause (2). Sub clause (2) defines what amounts to a false allegation and it requires that an allegation is false or misleading if at any stage of investigations or prosecution, it is proved that the alleged act did not take place.

The Committee is aware that an acquittal of a person may be based on so many matters, including the fact that the evidence adduced did not prove that the alleged act did not take place. When this happens, sub section (3) then makes such an acquittal a bar to the prosecution of the person who made the untrue allegation as proposed in sub clause (1) and (2).

Recommendations

The Committee recommends that clause 34 stands part of the Bill albeit with an amendment to delete sub clause (3).

5.15. Withdrawal of consent during sexual act

Clause 36 of the Bill proposes to allow a person, who had consented to a sexual act to withdraw that consent at any time before or during the performance of the sexual act.

The Committee notes that in most cases, save for the offence of defilement, consent is a total defence to a charge. In most sexual offences, the act being punished is the act of engaging in a sexual act without the consent of the other person.

The Bill now proposes to introduce 'post-penetration' consent which occurs in a situation where two people initially engage in consensual sexual intercourse, but during intercourse one person changes his or her mind and withdraws his or her consent to the sexual act.

Whereas the Committee is agreeable to have the principle of post penetration consent in the laws of Uganda, the Committee is concerned that the provision may pose practical and enforcement challenges. For instance, the provision is not clear as to how this will

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practically work. How will the other person know that the other person has withdrawn his or her consent?

The Committee further observes that the provision is redundant since it is already catered for in the offence of rape, wherein, the offence of rape is committed when a person does a sexual act with a person without that other person's consent. The Committee also contend that the provision is impractical since the provision did not specify the nature of withdrawal and when it is effective. The other views in the Committee included the view that the provision might be a sneaky way of introducing marital rape, a matter that had been included in the Sexual offences Bill, 2015, and was rejected by the Committee before the Bill was withdrawn.

The committee was unable to find any other jurisdiction other than the United States where post penetration withdrawal of consent is allowed. Even in the United States where this idea of post penetration withdrawal of consent arose, the jurisprudence is mixed with some states like California allowing it while in other states it's not allowed.

Recommendation

The Committee recommends that clause 36 be deleted.

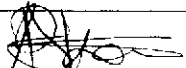
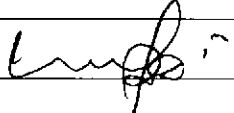
5. CONCLUSION AND RECOMENDATION

In light of the above, the Committee recommends that the Sexual Offences Bill, 2019 be read the second time and do pass with the following amendments-

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SIGNATURE OF MEMBERS ENDORSING THE REPORT ON THE SEXUAL OFFENCES BILL, 2019

SN	NAME	CONSTITUENCY	SIGNATURE
1.	Hon. Jacob Marksons Oboth (Chair)	West Budama South	
2.	Hon. Bitangaro Sam Kwezira	Bufumbira South	
3.	Hon. Jovah Kamateeka	Mitooma DWR	
4.	Hon. Isala Eragu Veronica	Kaberamaido County	
5.	Hon. Kajara Aston	Mwenge South	
6.	Hon. Mwiru Paul	Jinja East County	
7.	Hon. Basalirwa Asuman	Bugiri Municipality	
8.	Hon. Gureme R. Rwakoojo	Gomba West	
9.	Hon. Ongalo Kenneth Obote	Kalaki County	
10	Hon. Agaba Abbas Mugisha	Kitagwenda County	
11	Hon. Azairwe Dorothy. K	DWR Kamwenge	
12	Hon. Mugoya Kyawa Gaster	Bukooli North	
13	Hon. Akamba Paul	Busiki County	
14	Hon. Otto Edward Makmot	Agago County	
15	Hon. Adeke Anna Ebaju	NFY MP	
16	Hon. Nsereko Muhammed	Kampala Central Division	
17	Hon. Wilfred Niwagaba	Ndorwa East	
18	Hon. Abdu Katuntu	Bugweri County	
19	Hon. Ssemujju Ibrahim	Kira Municipality	
20	Hon. Medard Ssegona Lubega	Busiro East	
21	Hon. Mathias Mpuuga	Masaka Municipality	
22	Hon. Byarugaba Alex	Isingiro County South	
23	Hon. Akello Rose Lilly	DWR, Karenga	
24	Hon. Asamo Hellen Grace	PWD Eastern	
25	Hon. Namoe Stella	Napak DWR	

26	Hon. Akampulira Prosy	DWR Rubanda	
27	Hon. Suubi Brenda Asinde	DWR Iganga	
28	Hon. Amoding Monica	DWR Kumi	
29	Hon. Silwany Solomon	Bukooli County West	

PROPOSED AMENDMENTS TO THE SEXUAL OFFENCES BILL, 2019

CLAUSE 1: INTERPRETATION

Clause 1 is amended-

(a) Insert immediately before the definition of the word "attempt" the following-

"advanced age" means seventy five years and above;"

(b) Substitute for the definition of "sexual act" the following-

"sexual act" means the penetration, however slight, of a person's sexual organ by another person's sexual organ;"

(c) by substituting for the definition of "sexual exploitation" the following-

"sexual exploitation" means the obtaining of financial or other benefits through the involvement of another person in prostitution, pornographic acts or the production of pornographic materials or the use of a person in sexual intercourse or other unlawful sexual conduct;

(d) in the definition of "person in trust" substitute the phrase "person in trust" with "person in position of trust"

(e) by substituting for the definition of the word "prostitute", the following-

"prostitute" means a person who-

- (a) holds himself or herself out as available for a sexual act or sexual gratification for monetary or other gain; or
- (b) engages in a sexual act or sexual gratification for monetary or other gain.

Justification

- *to limit the definition of sexual act to only penetration of a person's sexual organ with another person's organ since the rest of the provision deals with acts that would constitute unnatural offences.*

- *To align the definition of sexual exploitation with the offence as created in clause 10.*
- *In the definition of the word "prostitution" to remove the words that require a person to have regularly offered him or herself for sex before he or she commits an offence;*
- *To expand the definition of the word "prostitute" to include persons who have engaged in sexual conduct for money or other monetary gain.*
- *To define advanced age in accordance with the constitution (sentencing guidelines for courts of judicature) (practice) directions, 2013*

CLAUSE 2: RAPE

In Clause 2-

(a) Substitute for sub clause (2) the following-

"(2) For purposes of subsection (1) (a), consent of a person to the sexual act shall be irrelevant where the consent was obtained by-

- (a) threats;
- (b) force;
- (c) fear of bodily harm;
- (d) duress;
- (e) undue influence;
- (f) means of misrepresentation as to the nature of the act; or
- (g) intimidation of any kind.

(b) In sub clause (3)-

(i) **substitute for "In this section" with "For the purpose of subsection (1) (b);"**

(ii) **substitute for paragraph (d), the following-**

"(d) suffering from a mental illness"

Justification

- *For clarity;*
- *To include other grounds that vitiate consent such as fear of bodily harm, misrepresentation as to the true nature of the sexual act;*
- *To change the nomenclature used in paragraph (d) from mental impairment, which is a form of a disability, to suffering from a mental illness which is certifiable illness;*

CLAUSE 3: AGGRAVATED RAPE

(a) In sub clause (1),-

(i) substitute for paragraph (c), the following-

“(c) the victim is a person with disability or suffers a disability as a result of the sexual act”

(ii) insert the following new paragraphs immediately after paragraph (c) and renumber the provision accordingly-

“the victim is suffering from a mental illness or suffers a mental illness as a result of the sexual act;”

“the offence is committed by a relative of the victim of the offence;”

(iii) substitute for paragraph (f) the following-

“(f) where the offender is a person in authority or person in position of trust;”

(b) Insert immediately after sub clause (1) the following-

“A person who is charged with an offence under this section shall undergo a medical examination to determine his or her health status, including a test for his or her Human Immunodeficiency Virus (HIV) status.”

(c) In sub clause (2) substitute for “not exceeding” with “for”

Justification

- *To provide other circumstances aggravating the offence of rape;*
- *To require a medical test to be carried out against a person who is charged with an offence to determine his or her health status, including a test for his or her Human Immunodeficiency Virus (HIV) status.*
- *To define advanced age, to be 75 years as prescribed in the sentencing guidelines*
- *For clarity and better drafting.*

CLAUSE 4: ADMINISTERING SUBSTANCE WITH INTENT TO COMMIT A SEXUAL ACT.

Clause 4 of the Bill is amended by inserting-

- (a) the word “knowingly” before the word “person” in the first line;
- (b) the words “or to enable any other person perform a sexual act with that person,” immediately before the “commits”

Justification

- *to require knowledge of the act constituting the offence;*
- *to punish a person who administers or causes to be administered a substance to another person in order to enable another person to perform a sexual act with the person;*

CLAUSE 5: SEXUAL ASSAULT

For clause 5, there is substituted the following-

“5. Sexual assault

(1) A person who intentionally and without consent touches or comes into direct or indirect contact with the sexual organ, breasts, buttocks or thighs of any person with—

- (a) any part of his or her body;
- (b) any part of the body of another person; or
- (c) any object, including any part of the body of an animal;

commits an offence and is liable upon conviction to imprisonment for three years.

(2) It is immaterial to a charge of sexual assault on a child to prove that the child consented to the act constituting a sexual assault.

(3) A person who commits the offence of sexual assault in the presence of a person’s spouse, family member or child commits an offence and is liable upon conviction to imprisonment for seven years.”

Justification

- *To differentiate between a sexual act and indecent assault which had been put in the same provision yet these are two distinct offences;*
- *For completeness, to make irrelevant the consent of a child to a charge of sexual assault on a child.*

INSERTION OF NEW CLAUSES IMMEDIATELY AFTER CLAUSE 5

Insert the following immediately after clause 5-

“Indecent assault

- (1) A person who, with intent to insult the modesty of another person, utters any word, makes any sound or gesture or exhibits any object, intending that such word or sound is to be heard, or that such gesture or object is to be seen by any other person commits an offence and is liable on conviction to imprisonment for a period not exceeding one year.
- (2) It is immaterial to a charge of indecent sexual on a child to prove that the child consented to the act constituting a sexual assault.
- (3) A person who commits the offence of indecent assault in the presence of a person’s spouse, family member or child commits an offence and is liable upon conviction to imprisonment for three years.

Indecent exposure

- (1) A person who unlawfully intrudes on the privacy of a person by-
 - (a) exposing or displaying that persons’ sexual organ, breasts, buttocks or thighs to any other person; or
 - (b) exposing or displaying his or her sexual organ, breasts, buttocks or thighs to that person or any other person;
 commits an offence and is liable on conviction to imprisonment for three years.
- (2) It is immaterial to a charge of indecent sexual on a child to prove that the child consented to the act constituting an indecent exposure.
- (3) A person who commits the offence of indecent exposure in the presence of a person’s spouse, family member or child commits an offence and is liable upon conviction to imprisonment for five years.

Justification

Consequential amendment arising from the amendment of clause 5 by dividing the provision into three distinct offences of sexual assault, indecent assault or indecent exposure

CLAUSE 6: INDECENT COMMUNICATION.

In sub clause (1)-

- (a) delete the words “without the consent of that other person” and
- (b) substitute for the words “three hundred currency points or to imprisonment for seven years” the words “five hundred currency points or imprisonment for ten years”

Justification

- *to harmonize the provision with the provisions of section 13 of the Anti-pornography Act*
- *to revise the penalty upwards.*

CLAUSE 7: SEXUAL HARRASSMENT

For clause 7, there is substituted the following-

“7. Sexual harassment

- (1) A person who-
- (a) makes direct or indirect sexual advances or requests whether verbal or written to;
 - (b) displays sexually suggestive pictures, objects, written materials or sexually suggestive gestures to ;
 - (c) engages in unwelcome touching, patting, pinching or any other unsolicited physical contact with; or
 - (d) makes sexually oriented comments, jokes, obscene expressions or offensive flirtations to;

an employee, prospecting employee, student, patient or other person under his or her trust or authority as a pre-condition for the grant of employment, spiritual healing, access to any service or preferential treatment in employment, promotion, recommendation,

academic progress, healing or other favour, commits an offence and is liable on conviction, to a fine not exceeding two thousand currency points or to imprisonment not exceeding ten years or both.

(2) It is immaterial to a charge under subsection (1) that-

- (a) the victim consented to sexual harassment;
- (b) the victim of the sexual harassment welcomed the sexual harassment; or
- (c) such conduct did not have detrimental effect on victim of the offence.

(3) Where-

- (a) the victim of the offence is a child, the convicted person shall instead of the punishment prescribed in subsection (1), be liable to imprisonment for eighteen years; or
- (b) the perpetrator of the offence is a public officer, such public officer shall in addition to the penalty in subsection (1), be removed from office.

Justification

- *For clarity*
- *To require that it is immaterial that the person consented to the sexual harassment or that the sexual harassment was welcome or did not have a detrimental effect;*
- *For completeness, to require persons who commit the offence of sexual harassment while public officers to vacate their offices in addition to the penalty prescribed in the section.*

CLAUSE 8: DETENTION WITH SEXUAL INTENT.

For clause 8, there is substituted the following-

"8. Detention with sexual intent

- (1) A person who detains another person with the intention of performing a sexual act with that person commits an offence and is liable on conviction, to imprisonment not exceeding seven years.
- (2) In this section, a person shall be deemed to have detained another person where that person-
 - (a) compels, induces, restrains or prevents other person, by any means, from leaving the premise, vehicle, vessel or any other place;
 - (b) with the intent to compel or induce the other person to remain in or upon the premises, vehicle, vessel or any other place, does any act

which prevents that person from leaving such premises, vehicle, vessel or place; or

(c) with the intent to compel or induce the other person to remain in or upon the premises, vehicle, vessel or any other place, that person withholds from the other person any clothing apparel or other property belonging to the other person detained.

(3) The consent of a person in detention to a sexual act shall not be a defence to a charge under subsection (1)."

Justification

- *For clarity and better drafting*
- *To expand the provision to include detention of a person for purposes of enabling another person to perform a sexual act with that person.*
- *To clearly require that the consent of a person detained is not a defence to a charge under this section.*
- *To remove the requirement for "unlawfulness" in the offence since there is no detention with intent to commit a sexual act that is lawful.*
- *To prescribe what amounts to unlawful detention*
- *To make consent of a person to a sexual act immaterial to a charge of detention with sexual intent.*

CLAUSE 9: SEXUAL ACT WITH PERSON IN CUSTODY.

Clause 9 is amended by-

(a) inserting immediately after the word "facility" the words "or inmate in a detention facility";

(b) renumbering the current provision as sub clause (1) and insert the following new sub clauses immediately after sub clause (1)-

"(2) For avoidance of doubt, the consent of the person in custody to the sexual act shall not be a defence to a charge under subsection (1).

(4) In this section, a detention facility includes a prison, police station or any other place gazetted or ordinarily used to lawfully detain people."

Justification

- *for completeness, to include an inmate in the provision*
- *To clearly require that the consent of a person detained is not a defence to a charge under this section.*
- *To define place of detention.*

CLAUSE 10: SEXUAL EXPLOITATION

Clause 10 is amended-

(a) by substituting for sub clause (1), the following-

“(1) A person who, for gain for himself or herself or another person-

(a) causes, encourages, induces, entices or incites another person to be sexually exploited; or

(b) controls any of the activities of another person to the effect that, that person is sexually exploited;

commits an offence and is liable on conviction, to imprisonment for a term not exceeding fifteen years.

(b) By inserting immediately after sub clause (2), the following-

“Where the victim of the offence is a child, the person charged with the offence of sexual exploitation shall on conviction be liable to imprisonment for life.”

“The consent of a victim to the sexual exploitation shall not be a defense to a charge under subsection (1).”

Justification

- *For clarity and better drafting*
- *To introduce a higher penalty where the victim of the offence is a child;*
- *To make immaterial, the consent of the victim of the offence of sexual exploitation.*

CLAUSE 11: UNNATURAL OFFENCES

For clause 11, there is substituted the following-

“11. Unnatural offences

(1) A person who-

(a) performs a sexual act with another person contrary to the order of nature; or

(b) engages in a sexual act with an animal;

commits an offence and is liable on conviction, to imprisonment for two years.

(2) For purposes of this section-

(a) a person shall be taken to have performed a sexual act with another person contrary to the order of nature if that person-

(i) penetrates another person's anus with his or her sexual organ;

(ii) allows another person to penetrate his or her anus with that other person's sexual organ;

(iii) penetrates or allows another person to penetrate his or her or that other person's sexual organ or anus with an object; or

(iv) performs a sexual act with a person of the same gender or does any of the acts prohibited in sub paragraphs (i), (ii) and (iii) with a person of the same gender.

(b) a person shall be taken to have engaged in a sexual act with an animal if that person penetrates an animal's sexual organ or anus with his or her sexual organ.

(3) A person who attempts to commit the offence of unnatural offence commits a felony and is liable, on conviction, to imprisonment for five years.

Justification

- *To define what amounts to sexual unnatural offences;*
- *a consequential amendment arising from the removal of the words like “mouth” and “anus” from the definition of the word sexual act.*

INSERTION OF NEW CLAUSE IMMEDIATELY AFTER CLAUSE 11

Immediately after clause 11, insert the following new clauses-

“Brothels

A person who keeps a house, room or place of any kind for purposes of prostitution commits an offence and is liable to imprisonment for seven years.”

“Prohibition of prostitution

Any person who practices or engages in prostitution commits an offence and is liable to imprisonment for two years.”

Prohibition of sexual act with a prostitute

A person who engages in a sexual act with a prostitute commits an offence and is liable on conviction to imprisonment for two years.

Justification

- *To prohibit prostitution, the operation of brothels and engaging in a sexual act with a prostitute.*
- *To continue the criminalization of prostitution.*

CLAUSE 14: AGGRAVATED DEFILEMENT

(a) in sub clause (1)-

(i) substitute for paragraph (d), the following-

“(d) offender is a parent, guardian, foster parent or a person in authority over the child;”

(ii) substitute for the words “imprisonment for life” the words “suffer death”

(b) insert immediately after subsection (2) the following-

“(3) Where a person is charged with the offence under this section, that person shall undergo a medical examination as to his or her Human Immuno Deficiency Virus (HIV) Status.

(4) For purposes of subsection (1), a “relative” means a person related to the child by blood or marriage, including where the relationship arises from adoption, fostering, guardianship or any other parental responsibility over a child.”

Justification

- *to revise the penalty upwards from imprisonment for life to death sentence as prescribed in section 129 of the penal Code Act for the offence of aggravated defilement.*
- *To define relative of a child*
- *To expand the provision to include parent, guardian, foster parent and other relations of a child.*
- *To require a person charged with aggravated defilement to undergo an HIV test as required in section 129 of the Penal Code Act.*

CLAUSE 22: MARRIAGE INVOLVING A CHILD

In clause 22 (1) of the Bill is amended in paragraph (b), by substituting for the word “purports to marry” the word “marries”;

Justification

- *For clarity, to criminalize the contracting of a marriage by any person, with a child.*

CLAUSE 23: PAYMENT OF COMPENSATION

For clause 23, there is substituted the following-

“23. Payment of damages

- (1) Where a person is convicted of an offence under this Act, court may in addition to any sentence imposed under this Act, order the convicted person to pay damages to the victim of the offence.
- (2) The damages ordered by the court under this section shall be a civil debt.
- (3) The victim of an offence under this Act shall have priority over any person or authority in recovering any debt arising from an order of court made against a person convicted of an offence under this Act.
- (4) The failure by the prosecution or any other person to apply for damages shall not be a bar to a grant of damages by the court, save that where court does not order for

payment of damages, the person presiding over the trial shall give reasons for that decision.

(5) For purposes of this section, a victim of a sexual offence means a person against whom an offence is committed under this Act.

Justification

- *To limited the provision to the award of damages only and not compensation since damages are only granted to atone the actual wrong suffered to the wrong suffered provide for the making of other orders, instead of providing for compensation which entitles many other matters such restitution, which may not be applicable in the circumstances of this case.*
- *To enhance the effectiveness of the provision, to require court to award damages, even when the same is not specifically requested and if it does not, to give reasons for the same*
- *For clarity, to define victim referred to in the provision.*

CLAUSE 27: UNCORROBORATED EVIDENCE OF A VICTIM

Redraft clause 27 as follows-

“Uncorroborated evidence of a victim

- (1) Court may require the corroboration of evidence tendered in proof of an offence under this Act.
- (2) Notwithstanding subsection (1), a person may be convicted of an offence under this Act based solely on the testimony of the victim of a sexual offence or a single witness, provided that the victim of the offence or the witness as the case may be, is truthful and reliable.

Justification

- *To afford court the discretion to require the corroboration of the evidence of a victim of a sexual offence rather than as currently proposed in clause 27, which proposes to prohibit the corroboration of the evidence of a victim of a sexual offence yet corroboration is essential since it supports the testimony of the complainant and connects or tends to connect the accused person to the commission of the crime.*

CLAUSE 30: CONTENT OF THE REGISTER.

Clause 30 of the Bill is amended by renumber the current provision as subsection (1) and inserting immediately after it the following-

“(2) without limiting the general effect of subsection (1), the register shall contain the following information—

- (a) the sex offender’s name and date of birth;
- (b) the sex offender’s national identification number;
- (c) the sex offender’s address;
- (d) the offence for which the sex offender was convicted of;
- (e) a sample of the offender’s finger prints and any other unique identifying features;
- (f) a photograph of the sex offender, and
- (g) any other information that the Minister may prescribe by regulations.

(3) A person registered on the sex offender’s register shall within seven days of changes in any of the registered information on the sex offender’s register notify, in writing, the National Identification and Registration Authority.

(4) The National Identification and Registration Authority shall upon receipt of the notification in subsection (3) update the register or do any other act as it deems fit.

(5) A person who contravenes subsection (3) commits an offence and is liable on conviction to imprisonment for a period not exceeding three years.

Justification

- *To prescribe the matters that must be registered on the register*
- *For completeness, to impose an obligation on a person registered on the register to inform the authority of any changes to the register.*
- *To prescribe an offence for non-compliance.*

INSERTION OF NEW CLAUSES IMMEDIATELY AFTER CLAUSE 33

Insert the following immediately after clause 33,

Requirement to report presence

- (1) Notwithstanding anything to the contrary, a person registered on the sex offender's register shall upon arrival in a district where he or she is not ordinarily resident, give notification of his or her presence to the local authorities in the area.
- (2) A person who contravenes any provision of this section commits an offence and is liable on conviction to imprisonment for five years.

Justification

- *To require a person who is registered on a sex offender's register to notify the local authorities in a district he or she arrives in whenever he or she leaves the district where he or she is resident.*

CLAUASE 33: DISLCOSURE OF SEXUAL OFFENCE RECORD

Clause 33 is amended in subsection (2) by inserting the word "not" immediately after the word "does"

Justification

- *To correct a drafting mistake.*

CLAUSE 34: FALSE ALLEGATIONS

Clause 34 is amended by deleting sub clause (3);

Justification

- *Sub clause (3) is redundant since a person may be guilty of an offence of false allegation under this clause notwithstanding that the person against whom the allegations were made was acquitted by court.*

CLAUSE 35: ATTEMPTS TO COMMIT SEXUAL OFFENCE.

Substitute for "seven" the word "one"

Justification

- *To reduce the penalty imposed for attempts in offences where the Act does not prescribe a specific offence of attempt since, in some cases, the penalty prescribed for the offence may be higher than the penalty for an attempt, thereby creating an absurdity.*

CLAUSE 36: CONSENT DURING SEXUAL ACT

Delete clause 36

Justification

- *The provision is redundant since it is already catered for in the offence of rape, wherein, the offence is committed when a person does a sexual act with a person without that other person's consent.*
- *The provision is impractical since the provision did not specify the nature of withdrawal and when it is effective.*
-

CLAUSE 37: PRINCIPAL OFFENDERS.

Delete clause 37

Justification

The provisions are redundant since they are well known criminal principles.

CLAUSE 38: JOINT OFFENDERS IN PROSECUTION OF COMMON PURPOSE.

Delete clause 38

Justification

- *The provisions are redundant since they are well known criminal principles*

CLAUSE 39: HARASSMENT ORDERS.

Substitute for clause 39 the following

"Conspiracy to defeat justice and interfere with witnesses

- (1) A person who does any act to obstruct, prevent, pervert or defeat the course of justice commits an offence and is liable on conviction to imprisonment for a term not exceeding five years.

- (2) In this section, a person shall be taken to have obstructed, prevented, perverted or defeated the course justice if that person-
- (a) subjects the victim of the offence or any other person to intimidation, harassment, fear, distress or harm as a means of preventing the-
 - (i) reporting of an offence under this Act;
 - (ii) victim or any other person from participating in the prosecution of an offence under this Act;
 - (b) dissuades, hinders or prevents a person from reporting the commission of an offence under this Act;
 - (c) dissuades, hinders or prevents lawfully bound to appear and give evidence as a witness from appearing or from giving evidence;

Justification

- *to create an offence against a person who perverts the course of justice and interferes with a witness or victim of an offence.*
- *The proposal in clause 39 to allow court grant a harassment order against such a person is impractical is not deterrent to prevent such conduct.*

CLAUSE 40: EXTRA - TERRITORIAL APPLICATION

For clause 40, there is substituted the following-

“Extra-Territorial Jurisdiction

(1) This Act shall apply to offences committed outside Uganda where –

- (a) a person who, while being a citizen of, or permanently residing in Uganda, commits an act outside Uganda, which act would constitute an offence had it been committed in Uganda;
- (b) the victim of the offence was a citizen of Uganda at the time of commission of the offence;
- (c) the offence was committed partly inside and partly outside Uganda;
- (d) the offence is committed against a stateless person who has his or her habitual residence in Uganda; or
- (e) a substantial proportion of the effects of the offence have occurred or taken place within the territory of Uganda.

(2) Notwithstanding subsection (1) –

- (a) no proceedings shall be instituted under this section without the written consent of the Attorney General;
 - (b) if the consent of the Attorney General is received under (a) proceedings may be instituted in any appropriate court and such court shall have jurisdiction to try the matter as if the offence or offences had been committed within its jurisdiction;
 - (c) a person shall not be tried for an offence under this section if that person has been acquitted or convicted of the same offence in another country.
- (3) A case under this Act shall be tried where-
- (a) the offence was committed;
 - (b) any of its elements occurred;
 - (c) the victim of the offence resided at the time of the commission of the offence.
- (4) Notwithstanding subsection (3), where the offence is committed outside Uganda, the case shall be tried as may be determined by the Director of Public Prosecutions.

Justification

- *For completeness and better drafting*